IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NAVE MARINE, INC.,	§	C.A. NO.
	§	
VS.	§	
	§	
HUDSON SHIPPING LINES, INC.	§	ADMIRALTY

PLAINTIFF'S VERIFIED COMPLAINT AND REQUEST FOR ISSUANCE OF WRIT OF MARITIME ATTACHMENT AND GARNISHMENT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Plaintiff, Nave Marine, Inc., ("Nave Marine" and/or "Plaintiff"), and for its Verified Complaint against Defendant Hudson Shipping Lines, Inc. ("Hudson Shipping Lines" and/or "Defendant"), pursuant to Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rule B") and seeking issuance of process of maritime attachment and garnishment, would respectfully show as follows:

I. JURISDICTION AND VENUE

1.1 This case is of admiralty and maritime jurisdiction pursuant to 28 U.S.C. section 1333 and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

1.2 This Verified Complaint is also brought pursuant to the Federal Arbitration Act, 9 U.S.C. section 1 *et seq.*, in that it involves a maritime transaction within the meaning of 9 U.S.C. section 1 and seeks to obtain security in assistance of London maritime arbitration proceedings pursuant to 9 U.S.C. section 8.

1.3 Venue is proper in this District because garnishee(s) in possession of property belonging to the Defendant is/are located and can be found in this District, and Defendant cannot be found within this District within the meaning of Supplemental Rule B.

II. PARTIES

2.1 Nave Marine is a Liberian corporation with a principal place c/o Cosmoship Management S.A., 34 Leosthenous Street, 185 36 Pireaus, Greece, from where the operations are conducted.

2.2 On information and belief, Hudson Shipping Lines is a Liberian corporation with its headquarters at P.O. Box N-4785, Building No. 3, West Bay Street & Blake Road, Bayside Executive Park, Nassau, Bahamas.

III. FACTS

3.1 At all times relevant to this action, Nave Marine was the owner of the motor vessel *Dream Catcher* (the "Vessel").

3.2 At all relevant times to this action, the Vessel was managed for Nave Marine by non-party Cosmoship Management S.A. ("Cosmoship").

3.3 Hudson Shipping Lines time chartered the Vessel from Nave Marine pursuant to a fixture recap dated September 28, 2016 (the "Fixture Recap"), which incorporated the terms of a time charter for the motor vessel *Pretty Lady* dated November 26, 2012.

3.4 The Fixture Recap provided for a hire rate of $7,300 per day pro rata, payable every fifteen days in advance.

3.5 The Vessel was delivered on October 5, 2016 at 05:01 GMT and redelivered on November 30, 2016 at 04:24 GMT. Thus, the Vessel was on hire for a period of 55.9731 days. At a hire rate of $7,300 per day, the total hire, before any deductions, was $408,612.46.

3.6 On November 30, 2016, Cosmoship presented to Hudson Shipping Lines Nave Marine's Final Hire Statement, which showed a balance due to Nave Marine of $127,483.03, payment of which was duly demanded. Thereafter Hudson Shipping Lines made three part payments of hire, as reflected in Nave Marine's revised final hire statement ("Hire Statement") dated December 22, 2016 (after applying certain credits, debits and all hire payments received prior thereto), leaving a remaining balance due to Nave Marine of **$33,870.95**, which Hudson Shipping Lines has failed and/or refused to pay. A true and correct copy of the Hire Statement is attached to this Verified Complaint as its Exhibit 1 and is incorporated herein by this reference.

3.7 On or about December 16, 2016, Hudson Shipping Lines provided Nave Marine with its own final hire Statement of Account ("Statement of Account"). A true and correct copy of the Statement of Account is attached to this Verified Complaint as its Exhibit 2 and incorporated herein by this reference.

3.8 The Hudson Shipping Lines Statement of Account includes an off-hire claim by Hudson Shipping Lines regarding the Vessel's alleged underperformance and also included a credit for alleged "Owners' Expenses" of $1,000, although Nave Marine incurred no such expenses for its account and thus the credit in the amount of **$1,000** is improper. *See*, Exhibit 2, Statement of Account, "Various Items," "Owners' expenses".

3.9 Additionally, the fixture recap provided that bunkers (fuel oil) on delivery were to be approximately 400 metric tons of intermediate fuel oil ("IFO") and 85 metric tons of low-sulphur marine gas oil ("LSMGO"). Bunkers on redelivery were to be about the same as on delivery, plus or minus ten percent. The fixture recap also allowed Hudson Shipping Lines to deduct the cost of the estimated bunkers on redelivery from the last sufficient hire payment(s).

3.10 In violation of the fixture recap, Hudson Shipping Lines credited Nave Marine with the delivery bunkers with the first fifteen day installment of hire. However, by way of the second installment of hire, Hudson Shipping Lines credited

Nave Marine for 31.79514 days of hire (Hudson Shipping Line's estimate of the remaining charter period), from which it deducted "bunkers on redelivery" in precisely the same amount as the bunkers on delivery. This amounted to no estimation at all, but rather a cancelling out of the initial obligation for fuel upon redelivery, resulting in a loss to Nave Marine.

3.11 As a result, the Vessel was redelivered to Nave Marine with a deficient quantity of 316.557 metric tons of IFO, which Nave Marine had to supply to the Vessel at Chittagong, Bangladesh, the next port where bunkers were available, not at Nave Marine's "delivery price" of $265 per metric ton, but at a price of $375 per metric ton, resulting in a loss to Nave Marine of $110 per metric ton of increased costs to it of that quantity of bunkers.

3.12 In addition, on redelivery the Vessel was very low on IFO, and as a result the Vessel had to consume marine diesel oil to safely proceed to Chittagong, the discharge port under the next employment of the Vessel.

3.13 Accordingly, Nave Marine suffered damages of $**59,940.60** as a result of Hudson Shipping Lines' breach of its obligation to redeliver the Vessel to Nave Marine with the stipulated quantity of bunkers on board.

3.14 Nave Marine also has a claim for interest against Hudson Shipping Lines in the amount of no more than $**486.68** due to the payment of hire which was in breach of the fixture recap. Nave Marine seeks interest for this breach in an amount of not more than $486.68.

3.15 Nave Marine's total principal claim as set forth above amounts to $**95,298.23**.

3.16 Clause 70 of the Fixture Recap provides that all disputes arising out of the contract shall be referred to arbitration in London. Nave Marine has commenced arbitration in London against Hudson Shipping Lines which is now proceeding before Mr. Bruce Harris as sole arbitrator.

3.17 Interest and costs are routinely awarded to the prevailing party in London arbitration. Nave Marine expects to be awarded interest for a period of three years from redelivery of the Vessel, such interest to be at 5% per annum, compounded quarterly for a total interest award of $**15,125.32**.

3.18 Nave Marine also expects the arbitration will last approximately three years, and that Nave Marine's recoverable costs will amount to $**50,000**.

3.19 Nave Marine seeks issuance of process of maritime attachment and garnishment so that it may obtain *quasi in rem* jurisdiction over Hudson Shipping Lines in this District and to obtain security for its claims in the London arbitration, including its claim for contractual attorney's fees and costs, in the total sum of $**160,423.55**.

3.20 Hudson Shipping Lines cannot be found within this District within the meaning of Supplemental Rule B, but is believed to have, or will have during the pendency of this action, property and/or assets in this District consisting of cash, funds, freight, hire, and/or credits in the hands of Garnishees in this District, including but not limited to funds currently on deposit in the Registry of this Court in the amount of $1,368,727.64, placed there pursuant to Order dated July 8, 2016, made in *Castleton Commodities Shipping Co. PTE. Ltd. v. HSL Shipping & Logistics (NA) Inc., et al.*; United States District Court, Southern District of Texas, Houston Division; C.A. No. 4:16-cv-01472 (D.E. 41), under receipt number HOU064124.

IV. RULE B ALLEGATIONS

4.1 Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees, which are believed to be due and owing to Defendants. *See* Affidavit of David S. Toy, attached hereto and incorporated herein by this reference.

4.2 Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the

Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions of the Federal Rules of Civil Procedure, and also pursuant to the United States Arbitration Act, 9 U.S.C. sections 1 and 8, attach attaching, *inter alia*, any assets of Defendants held by any garnishee(s) within the District for the purpose of obtaining personal jurisdiction over Defendants, and to secure Plaintiff's claim as described above.

WHEREFORE, Plaintiff prays that:

A. process in due form of law issue against Hudson Shipping Lines, Inc., citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. since Hudson Shipping Lines, Inc., cannot be found within this District pursuant to Supplemental Rule B, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Supplemental Rule B attaching all of Hudson Shipping Lines, Inc., tangible or intangible property held by any garnishee within this District, which are due and owing to Hudson Shipping Lines, Inc., up to the amount of at least $160,053.55 to secure Nave Marine's claim, and that all persons claiming any interest in the same be cited to appear and, pursuant to Supplemental Rule B, answer the matters alleged in the Verified Complaint;

C. upon attachment of the amount demanded, that this Court stay this action pending outcome of the parties' arbitration, and this Court retain jurisdiction over this matter through the entry of a judgment or award associated with the pending claims, including appeals thereof; and

D. Nave Marine have such other and further and different relief to which it may show itself justly entitled, in law or in equity.

Respectfully submitted,

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